

1 Q Is that Mr. Brown?

2 A Would have the three of us meet. Yes, Rick Brown.

3 Q Had you known Mr. Brown prior to that time?

4 A I had. He was in the same little school in
5 Chicago.

6 Q He testified that you went to high school
7 together.

8 A Yes. He was an upper classman, so he didn't worry
9 about me too much. So there was a big gap between our
10 acquaintance.

11 Q And just to try and expedite a little bit, my
12 recollection is that Mr. Brown testified that he spoke with
13 you on the phone on September 21st and met with you and Mr.
14 Hicks in person on September 22nd. Is that roughly in
15 accord with your memory of --

16 A Yes.

17 Q In those meetings with Mr. Brown, did you describe
18 your proposal?

19 A I did. I think we went over the whole -- the
20 whole thing again. I think Dave wanted us -- he wanted the
21 whole -- hear it all again and -- and get Rick's reaction.

22 Q Do you believe that you mentioned in your meeting
23 with Mr. Brown your hope that your children could have an
24 option to purchase out Mr. Hicks' shares one day?

25 A Yes.

1 Q At the conclusion of that meeting on September
2 22nd with Mr. Brown and Mr. Hicks, did you have any
3 agreement or understanding with Mr. Hicks or Mr. Brown
4 regarding that hope?

5 A No.

6 Q Did they indicate to you or manifest to you any
7 agreement or acquiescence in that proposal on September
8 22nd?

9 A No.

10 Q Now, did there come a time, Mr. Dille, when it
11 occurred to you that you might loan or give your children
12 money in connection with WRBR?

13 A Yes.

14 Q Do you know when that first occurred to you?

15 A Sometime in September or October as -- as -- as
16 Mr. Brown and Mr. Hicks proceeded. There was some momentum,
17 so yes.

18 Q What, if anything, did you do when it occurred to
19 you that you might loan or give them money?

20 A I called Peter.

21 Q Peter?

22 A Peter Tannenwald.

23 Q And you've earlier testified that Mr. Tannenwald
24 was an attorney at Arent, Fox?

25 A He was, yes -- and said I just wanted to review

1 with him what he had said to me earlier on. And I said,
2 "Can I" -- "Can I loan kids or give money to my kids?". And
3 we reviewed the situation, is there a single 51 percent
4 shareholder. Yes, David Hicks.

5 "So your kids are minority shareholders." I said,
6 "That's right. There are three of them." And he said, "In
7 the event of a single 51 percent shareholder, your kids
8 become, as they are minority shareholders, what the
9 Commission refers to as 'non-attributable interests' in as
10 much" -- "much less concern to the Commission", as to be
11 insignificant I gathered.

12 And further, he said that there is a parent-child
13 relationship, also, which parents can lend or give money to
14 kids.

15 Q So --

16 A So I --

17 Q So that's all -- at the conclusion of that -- were
18 you finished?

19 A Yes. I mean, that -- this was in October or
20 whatever.

21 Q At the conclusion of that conversation with Mr.
22 Tannenwald, what understanding, if any, did you have
23 regarding the Commission's interest in where your children
24 got their money?

25 A I gathered -- none.

1 Q Did there every come a time when you discussed
2 with Mr. Tannenwald or anyone else whether there were any
3 FCC issues surrounding your thoughts or proposal that your
4 children might have an option to purchase Mr. Hicks'
5 interest?

6 A I asked Peter could --

7 Q At the same time or later?

8 A I had asked him somewhere in there could the kids
9 have an option. And he said, "Sure. They may not be able
10 to exercise it, but you can have an option."

11 Q Now, Mr. Dille, after your September meetings with
12 Mr. Brown and Mr. Hicks, what happened next in connection
13 with the WRBR transaction?

14 A The ball -- they took the ball. And they --

15 Q They being who?

16 A They being Dave Hicks and -- and Rick Brown. And
17 they began negotiating with Honickman (phonetic) -- the --
18 Booth's lawyers in Detroit.

19 Q Negotiating what?

20 A Sorry, the asset purchase agreement, the deal.

21 Q And I take it there came a time when the asset
22 purchase agreement was signed on behalf of Hicks
23 Broadcasting and Mr. Booth, is that correct?

24 A That's right.

25 Q Do you -- do you have any memory of when that was?

1 A I think that was in the latter part of -- well, it
2 was in the tail end of November.

3 Q Now, Mr. Dille, there did come a time, didn't
4 there, when an application to assign the license of WRBR was
5 filed with the Federal Communications Commission?

6 A Yes.

7 Q As you sit here today, do you know when that
8 application was filed?

9 A At the tail end of December of '93.

10 Q Okay. And I think that record will reflect that
11 it was filed on December 22nd, 1993. Is that roughly your
12 understanding?

13 A Yes.

14 Q Tell us, please, what role, if any, you've played
15 in connection with the filing of that application.

16 A None.

17 Q Did you see it before it was filed?

18 A No.

19 Q Did you consult with anyone about it before it was
20 filed?

21 A No.

22 Q Did you see it after it was filed?

23 A No.

24 Q When is the first time, Mr. Dille, that you
25 remember seeing the application that was filed by Hicks

1 Broadcasting of Indiana?

2 A I saw part of it I guess in connection with the --
3 this -- these proceedings.

4 Q Let me ask you, if you would please, to turn to
5 Mass Media Bureau Exhibit Number 3 which I believe is also
6 still in the first binder.

7 MR. JOHNSON: And the application -- the first
8 page of the application, Your Honor, is at page 14 of that
9 exhibit.

10 JUDGE CHACHKIN: Exhibit 3.

11 MR. JOHNSON: Page 14.

12 JUDGE CHACHKIN: That's 3, 14.

13 BY MR. JOHNSON:

14 Q Do you have that, John?

15 A I do. I think I do.

16 Q Now, this is the -- pursuant to previous
17 testimony, this is the assignment application that was filed
18 in connection with the transaction which brings us here.
19 Could you please to page 20 of that same exhibit, Mass Media
20 Bureau Number 1 -- I misspoke, Mass Media Bureau Number 3.

21 A Section 2?

22 Q Yes, sir.

23 A Yes.

24 Q There is a question there that appears, question
25 number 15. Why don't you just take a moment, so I know

1 you're familiar with it, to read the question and the
2 answer.

3 A Yes.

4 Q Okay. Did you play any role at all in providing
5 that answer to that question, Mr. Dille?

6 A No.

7 Q But as you sit here today and read that question
8 and that answer, based upon your knowledge of the facts, was
9 the answer given an accurate one?

10 A This is accurate.

11 Q If you had participated, would you have answered
12 it in the same way?

13 A I would have.

14 Q Now, there did come a time, didn't there, when you
15 were asked to provide certain information to the FCC in
16 connection with the application to -- the assignment
17 application?

18 A Yes.

19 Q Okay. When was that, do you recall?

20 A In the middle of February or thereabouts.

21 Q What year?

22 A Of 1994.

23 Q Tell us what happened.

24 A Campbell -- Alan Campbell called me and said,

25 "They're" -- referring to the Commission -- "about to grant

1 this transfer, but they need a statement from you and your
2 father saying that you wouldn't be involved in the financing
3 or" -- "of the company or the day-to-day operations of it."

4 Q And this was a telephone call with Mr. Campbell?

5 A This was a telephone call.

6 Q At that time, did he explain to you why --

7 A No.

8 Q -- the Commission wanted that procedure?

9 A No, no.

10 Q And did you ask him why?

11 A I didn't.

12 Q What happened next?

13 A He faxed the statement.

14 Q Okay. And what happened after that?

15 A Well, when I got the statement, the statement I'm
16 talking about -- and I presume it's in here somewhere -- had
17 both my name and my father's name on it. And the statement
18 did require that -- a reference to my father. So I -- but I
19 told Allen -- and there were two signature places there --
20 that my father, I mean, was down in Florida for one thing
21 and that it was really going to be hard for him to sign it,
22 I mean just physically hard.

23 Q How old was your father at this time, Mr. Dille?

24 A He was -- I'm sorry, he was 80 -- 1913 whatever
25 that is.

1 Q Okay.

2 A Yes, 80.

3 Q Is your father still alive by the way?

4 A No. He died not long after that.

5 Q So you mentioned to Mr. Campbell that it would be
6 difficult to obtain your father's signature.

7 A And his signature was going to be meaningless
8 anyway.

9 Q And what did Mr. Campbell say?

10 A He said, "Fine. Well, I think that will be all
11 right." And so the next faxed-back version was the same
12 statement, but only my signature.

13 Q Let me refer you, if I could please, to Mass Media
14 Bureau Exhibit Number 3 which is still in binder number one
15 there and specifically, Mr. Dille, to the documents that
16 appear at page 85 and 86 of that exhibit.

17 A Yes.

18 Q And when you say, "Yes", are you now looking at
19 page 86 of that exhibit, Mr. Dille?

20 A I am, yes.

21 Q And is that the statement that you provided to Mr.
22 Campbell?

23 A Yes, it is.

24 Q I would like to direct your attention, if I could
25 please, to the second sentence of that statement which says,

1 "This is to advise the Commission that neither I nor my
2 father, John F. Dille, Jr., will finance or guarantee the
3 purchase of the station by Hicks Broadcasting."

4 First of all, Mr. Dille, did either you or your
5 father finance the purchase of the station by Hicks
6 Broadcasting?

7 A No.

8 Q When you signed this statement, did it occur to
9 you that this statement might in some way be inconsistent
10 with the fact that you had loaned your children or given
11 your children money to put up the escrow deposit?

12 A No.

13 Q Why not?

14 A I had spoken to Peter Tannenwald and he was
15 crystal clear on the point. "In the event of a 51 percent
16 shareholder -- single shareholder, your kids are non-
17 attributable or are what are referred to by the Commission
18 as non-attributable interests and in as much as meaningless
19 to the Commission."

20 Q Now, the second -- the third sentence of that
21 statement says, "Moreover, upon acquisition of the station
22 by Hicks Broadcasting, neither I nor my father will be
23 involved in the day-to-day operation of the station." Do
24 you see that statement?

25 A I do.

1 Q First of all, Mr. Dille, have either I or your
2 father been involved in the day-to-day operation of WRBR?

3 A No.

4 Q At the time you signed this statement, Mr. Dille,
5 did it occur to you that this statement would apply to
6 anyone other than yourself; for example, to employees of
7 Pathfinder?

8 A No -- I mean, no.

9 Q Why not?

10 A It -- well, it says "I" for one thing. And we had
11 -- we had the JSA.

12 Q What do you mean by that?

13 A Well, I mean, the JSA was -- the selling functions
14 of the station were -- had already been -- had been in
15 operation.

16 Q Do you know whether or not Mr. Campbell was aware
17 that there was a JSA at the time that you provided this?

18 A Sure.

19 Q How do you know that?

20 A Well, I mean, he had bene involved in -- in our
21 dealings with Booth and so forth.

22 Q And under the JSA that was in place at that time,
23 were Pathfinder employees in fact already providing services
24 to Booth under the JSA?

25 A Yes.

1 Q I would like to ask you, if you would please, to
2 turn to another document which has been previously
3 identified as Mass Media Bureau Exhibit Number 1 at page 41.

4 MR. JOHNSON: For the record, Your Honor, this is
5 a letter from Alan Campbell to David Hicks dated February
6 17th, 1994.

7 THE WITNESS: I'm lost here.

8 MR. JOHNSON: I think it's at Tab 1, John.

9 THE WITNESS: Tab 1, page?

10 MR. JOHNSON: Page 41.

11 THE WITNESS: Page 41? Well, this just says page
12 4. But it's right after --

13 MR. JOHNSON: That's the document.

14 THE WITNESS: Yes, okay.

15 MR. JOHNSON: It should be 41. There should be a
16 1 there.

17 THE WITNESS: Yes, okay.

18 BY MR. JOHNSON:

19 Q Well, just so we're clear, Mr. Dille, what are you
20 looking at?

21 A I'm looking at a letterhead, "Irwin, Campbell and
22 Crowe (phonetic), Attachment 6", it says up at the top.
23 It's a letter to Mr. David Hicks from Alan Campbell dated
24 February 17th, '94.

25 Q Now -- and do you see at the bottom of that

1 letter, it indicates a CC to Mr. Robert A. Watson?

2 A Yes.

3 Q The first question, Mr. Dille, on or about
4 February 17th, 1994 or in the weeks and months thereafter,
5 did you see this letter?

6 A No.

7 Q Prior to the beginning of these proceedings, had
8 you ever seen this letter?

9 A No.

10 Q I want to draw your attention, if I could, to some
11 different phraseology that is in the third paragraph -- the
12 first sentence of the third paragraph of this letter which
13 says, "Second, the staff wants a statement from John Dille
14 and his father that they will not be involved in the day-to-
15 day operation of WRBR and will not participate in the
16 financing of the purchase of the station for John's
17 children." Do you see that statement, Mr. Dille?

18 A I do.

19 Q In connection with your statement to the FCC which
20 was the exhibit that we've just been referring to, did
21 anyone ever ask you that question?

22 A No.

23 Q What if they had? What would you have done if you
24 had been asked about financing the purchase of the station
25 for your children?

1 A Well, I would have said that I had already lent my
2 kids the escrow money. But furthermore, I didn't -- I
3 didn't -- I didn't want to be blocked out from lending
4 them -- in the event I needed to, lending them money in the
5 future.

6 Q But that conversation never took place, did it?

7 A No.

8 Q Is that because no one ever asked you this
9 question?

10 A No.

11 Q Now, Mr. Dille, after the February amendment we've
12 been discussing, did there come a time when the option for
13 your children to purchase Mr. Hicks' shares in WRBR did get
14 negotiated?

15 A Yes.

16 Q To the best of your recollection, can you tell us
17 how that happened?

18 A Excuse me. Toward the very end, the last week in
19 March, in the -- in the course of the -- forming the
20 operating agreement, I think there had been some draft or
21 two going between Sam Thompson of Barnes & Thornberg --

22 Q Who was Mr. Thompson representing at that time?

23 A Us.

24 Q Your children?

25 A Yes. And Rick Brown. I said to -- I said to Bob

1 Watson, "Let's" -- "Let's try for this option." And -- and
2 so we took the -- the language, the formula from a previous
3 deal, JAM Communications (phonetic) and put it in as a call
4 provision of the operating agreement. It was a formula that
5 was the greater of two numbers. It was the formula and
6 \$50,000.00 I think was the minimum.

7 Q Let me just stop you there. And give us your best
8 memory of when in time you gave that direction to Mr.
9 Watson.

10 A At the very end, in March -- at the end of March;
11 March 24 or 25.

12 Q Now, you and I have discussed a moment ago your
13 meeting with Mr. Hicks and Mr. Dille on September 22nd of --

14 A Mr. Brown.

15 Q -- right --

16 A Mr. Hicks and Mr. Brown.

17 Q Well, you were also there -- Mr. Brown on
18 September 22nd of 1993. Do you remember that?

19 A I do.

20 Q Okay. And I think you told us that you described
21 to Mr. Brown and to Mr. Hicks at that time your hope that
22 your children could have an option. My question is this:
23 After that meeting on September 22nd of 1993 until this
24 direction to Mr. Watson which you recall sometime late in
25 March of 1994, what conversations did you have with Mr.

1 Hicks or anyone representing Mr. Hicks on the topic of an
2 option for your children?

3 A None.

4 Q It wasn't mentioned again in that time period?

5 A I don't think so. No.

6 Q Now, you said that the provision came from another
7 deal which I think you described as JAM Communication,
8 correct?

9 A Yes.

10 Q Did the formula come out of that --

11 A Excuse me -- yes.

12 Q -- pre-existing provision?

13 A Sorry?

14 Q The formula came out of that deal --

15 A Yes.

16 Q -- out of the JAM deal?

17 A Yes.

18 Q We've had some testimony in this case, Mr. Dille,
19 concerning the five times cash flow multiple that is
20 proposed in the call provision. You've heard that
21 testimony.

22 A I have.

23 Q Where did that come from?

24 A The -- where did the five come from or where did
25 the --

1 Q Yes, where did the five come from?

2 A It was a number that the woman owned the other
3 half of -- Julia Marr (phonetic), Julia A. Marr, that's what
4 JAM stands for. And I had negotiated in the fall, early
5 winter of '92 another --

6 Q Okay. Well, let me just stop you.

7 A -- another radio station.

8 Q Did -- that's the same multiple that got proposed
9 to Mr. Hicks, isn't it?

10 A That's correct.

11 Q So did that come from the JAM deal?

12 A Yes.

13 Q Okay. Now, I interrupted you. You were telling
14 me that you instructed Mr. Watson to try for the option and
15 the provision was inserted in the operating agreement. Did
16 Mr. Hicks or Mr. Brown accept your proposal?

17 A Well, I -- here, let me just tell you what -- what
18 followed. Within a day or a couple of days, they counter-
19 proposed -- the call provision, that part was okay. But
20 they increased the \$50,000.00 minimum to \$100,000.00. And
21 they included a -- in a side letter, a put provision with a
22 similar \$100,000.00 floor.

23 Q Okay. Well, let me direct your attention then if
24 I could please to Mass Media Bureau Exhibit Number 1 at page
25 42. Do you see that document, Mr. Dille?

1 A I do.

2 Q Can you tell us what that is?

3 A This is a side letter -- what is referred to as a
4 side letter between David Hicks and my children.

5 Q Is it the side letter that you were just referring
6 to in your answer to the previous question?

7 A It is.

8 Q What was your response, if you recall, to Mr.
9 Brown's proposal of the put provision?

10 A Well, given -- it was okay. It was not the
11 easiest thing in the world to give.

12 Q Why?

13 A Well, \$100,000.00, it was a lot of money. And a
14 put is a -- well, it depends on when he puts.

15 Q In your experience, when is the put likely to be
16 exercised?

17 A Well, I think there are probably two that come to
18 mind. One is when -- different people have different
19 priorities and life changes and so on and so forth. And
20 maybe Dave comes along and puts or whoever puts at a
21 convenient time, or maybe they come along and put when
22 things aren't going so good, for example. And so that's
23 when -- when things are fine, this is great. There's no
24 problem. But when things are bad, it's a little more
25 painful. It could be a little more painful.

1 Q Paragraph 3 of this side letter really -- is
2 entitled "Indemnification and Contribution". We've had some
3 testimony about this. I take it in late March, your
4 children agreed to indemnify Mr. Dille [sic] and hold him
5 harmless under the letter -- I mean Mr. Hicks and hold him
6 harmless under the letter of credit. Is that correct?

7 A That's correct.

8 Q Why did you agree to that in late March of 1993?

9 A Well, it's -- it's late in the day that the
10 station has been granted -- the transfer has been granted.
11 And so in one way, I thought there was a little risk that
12 the thing wasn't going to close. But -- and then if that's
13 the kind of thing, if that's what made Dave comfortable,
14 that was okay with me.

15 Q And what about the indemnification provision? Why
16 on behalf of your children did you agree to that?

17 A Well, the -- the -- sorry.

18 Q The indemnification under the -- I mean the
19 changing of the priorities under the guarantee, why did you
20 agree to that?

21 A Yes. Well, that's a little different. You have
22 to -- that was okay. Here's why. If you know that the
23 final payment of the -- of the note to Booth was \$240,000.00
24 and the guarantee is \$250,000.00, there really was, with the
25 exception of the \$10,000.00 difference, no time in which the

1 kids would not have been virtually equal with Dave.

2 So I didn't think it was much of an issue at all.

3 And the only time was in that little \$240,000.00 to
4 \$250,000.00 piece. And so I thought it was sort of a
5 meaningless -- not insignificant, but an unimportant --

6 Q These two things --

7 A -- thing to give.

8 Q -- you've just described to us, you're thinking
9 about the indemnification and you're thinking about the
10 guarantee. Did you discuss those with anyone at the time
11 that Mr. Brown made the proposal?

12 A I talked about it a lot.

13 Q Other than with Mr. Watson, did you discuss it
14 with anyone?

15 A Not that I recall.

16 Q Now, Mr. Dille, at any time prior to the proposal
17 contained in the side letter in late March of 1994, had you
18 agreed to indemnify or hold Mr. Hicks harmless in any
19 respect in connection with the WRBR deal?

20 A No.

21 Q Is this the first time this had come up?

22 A It is.

23 Q Now, Mr. Dille, let me change topics on you a
24 little bit. Did there come a time after Hicks Broadcasting
25 of Indiana acquired WRBR that Dave Hicks came to work for

1 you?

2 A Yes.

3 Q Can you tell us how that happened?

4 A In -- in late summer of 1994, we had embarked a
5 signage business -- sign, light, computer vinyl -- computer-
6 generated cut signage; banners and -- and light-weight signs
7 business. The idea was to package it with signage with
8 radio advertising. Many clients, many advertisers buy radio
9 time and use signage in their places of business. So this
10 was the idea there. Dave was available --

11 Q How do you know -- how did you know at that Mr.
12 Hicks was available?

13 A Well, because he was fired by his, for lack of a
14 better term, partners.

15 Q At Crystal Broadcasting?

16 A At Crystal Broadcasting. And that was in the
17 summertime. So he was -- he was available and he lived 45
18 minutes or so away in -- in Portage which is just a little
19 south of Kalamazoo. So it seemed to me a perfect -- a
20 perfect opportunity to take a guy who knew radio and knew
21 business to help -- to help our rookies get these stores
22 started. There were three of them, one in -- one in Elkhart
23 and one in -- we needed to open one in Elkhart, then Fort
24 Wayne and then Grand Rapids.

25 Q Now, how, if at all, did Mr. Hicks' job

1 responsibilities evolve after he came to work for you?

2 A Well, he -- I think he started in August or -- or
3 September. And that -- and the start-up period went along.
4 And all the while, I'm sort of getting to know him better.

5 In January or thereabouts, I thought it might be
6 helpful -- it would be helpful if we had somebody to focus
7 more specifically on national sales for our company so that
8 our representatives, called national reps., would focus on
9 us as one of their clients in a conscientious way which
10 meant that they would assist them in the selling of time on
11 our behalf on a national level.

12 Q Did there also come a time when you asked Mr.
13 Hicks to take on certain responsibilities with respect to
14 stations in Grand Rapids?

15 A Yes. In the -- in the mid-summer, it was clear
16 that we needed to make a change there. And I asked Dave --
17 by now I've come along pretty well. I've asked him to take
18 over that operation in Grand Rapids and shepherd it along.

19 Q Now, we've heard some testimony about this from
20 previous witnesses, Mr. Dille, but I want to ask you. Did
21 there also come a time when you agreed to a bonus or
22 additional compensation for Mr. Hicks?

23 A Yes.

24 Q Tell us how that happened.

25 A In January of '95, he had indicated that he was

1 really struggling with his situation up in Kalamazoo. And
2 he was doing a good job for us. So --

3 Q Well, what do you mean that he was struggling with
4 his situation in Kalamazoo?

5 A Well, he had indicated some to me and some to Bob
6 that between loss of income, that he was making half what he
7 was making with us -- half with us what he was making in --
8 or less than half up in Kalamazoo, plus the burden of
9 litigation in order to -- I mean, they fired him and then
10 they cut him off from his assets; that he was really getting
11 screwed.

12 So I -- I decided to give him a helping hand. He
13 was doing a good job for us anyway, and so I did. I told
14 Bob, "Let's help."

15 Q Now, Mr. Dille, you don't mean to suggest, do you,
16 that you didn't know that he might use that additional
17 compensation to make a contribution to Hicks Broadcasting or
18 did you know?

19 A No. I -- I knew that he had among his debts, that
20 he had -- that Hicks, L.L.C. had debts to Booth and he as
21 a -- as a member had obligations.

22 Q At the time that you agreed with Mr. Watson to
23 give Mr. Hicks a bonus, did it occur to you in any way that
24 that might be considered inconsistent with your promise to
25 the Commission not to finance the acquisition of the

1 station?

2 A No. I just wanted to help the guy.

3 Q Now, Mr. Dille, we've had previous testimony about
4 this. But we're all interested to hear yours. These
5 additional bonus checks were omitted from Pathfinder's
6 response to the Commission's letter of inquiry. Do you have
7 any explanation for that?

8 A I forgot about it. These were bonuses. And
9 when -- and in as much as I said, "Let's" -- "Let's help",
10 and the issue went to me, it went away. In the course of
11 these proceedings, Bob was going through some data in
12 response to some question and saw that Dave's salary and his
13 W-2 did not match. And when he -- when he noticed that, it
14 triggered his memory and he came to me. And that's when we
15 notified Latham, you fellows. And I think you told the
16 Court in your first meeting.

17 MR. JOHNSON: Thank you, Mr. Dille. Your Honor, I
18 see that we're approaching the lunch hour and I'm about to
19 shift to a completely different topic. I'm happy to carry
20 on, but this is also a good stopping point.

21 JUDGE CHACHKIN: All right. Why don't we recess
22 then just until 12:30.

23 (Whereupon, the trial was recessed to reconvene at
24 12:30, this same day.)

25 //

1 A F T E R N O O N S E S S I O N

2 JUDGE CHACHKIN: Back on the record.

3 MR. JOHNSON: Thank you, Your Honor.

4 Whereupon

5 JOHN F. DILLE, III

6 having been previously duly sworn, resumed the stand, was
7 examined and further testified as follows:

8 BY MR. JOHNSON:

9 Q Mr. Dille, let's turn now to a time after Hicks
10 Broadcasting of Indiana acquired WRBR. I take it there came
11 a time when you became aware that pursuant to an accounting
12 agreement and the JSA, Pathfinder was paying the bills of
13 Hicks. Was that right?

14 A Yes.

15 Q Okay. And we've had a lot of testimony -- and I
16 don't mean to reinvent the wheel here, but let me just get
17 your basic understanding of it. When a bill was paid by the
18 accounting department of Pathfinder and charged to Hicks,
19 how as you understood it did that get reflected in the books
20 and records of both Pathfinder and Hicks?

21 A You mean beyond the chart --

22 Q Yes, well, sort of just --

23 A -- of the common account?

24 Q How were they treated on the books and records?

25 A A -- both a payable or a receivable would be

1 recorded as such on the balance sheet of the respective
2 companies.

3 Q Now, on Pathfinder -- if -- if at the end of a
4 month it turned out that Hicks Broadcasting in the
5 accounting treatment owed money to Pathfinder, that would be
6 treated as a receivable on the books and records of
7 Pathfinder?

8 A That's correct.

9 Q Okay. And did you get monthly reports of those
10 receivables?

11 A Well, I got Pathfinder's receivables, yes.

12 Q How were -- how were receivables --

13 JUDGE CHACHKIN: Have you finished? I don't know
14 if he finished. You said, "But", and he was going to say
15 something else.

16 THE WITNESS: Well, I was just going to say the
17 receivables come on a single line in -- on the Pathfinder's
18 balance sheet.

19 BY MR. JOHNSON:

20 Q And by that you mean they are not separated by
21 vendor?

22 A Neither vend, that's correct.

23 Q Or client or --

24 A No. It's an aggregated -- the receivables for the
25 Pathfinder Communications Corporation.

1 Q So by reference to the Pathfinder balance sheet,
2 are you able to tell in any particular month what the Hicks
3 receivable was?

4 A No. That number would be a couple of million
5 bucks.

6 Q The general receivable number at Pathfinder.

7 A Yes.

8 Q And the Hicks receivable would just be some part
9 of that I would say.

10 A It would be a part of it, yes.

11 Q Okay. And are you exaggerating when you say the
12 number of the general aggregate receivable would be a couple
13 of million dollars?

14 A No. It's probably more than that depending on the
15 season and so forth. But it's a big number in my view.

16 Q Well, focusing on Pathfinder receivables
17 generally, is it uncommon for receivables from a particular
18 client to move into tens of thousands of dollars?

19 A No.

20 Q And how come, and is it in your experience, that a
21 receivable will age in the vernacular, or last for some
22 period of time?

23 A It's not -- it's not uncommon at all. It's -- as
24 I talk to friends and other businesses, it's a slow pay
25 business.

1 Q What do you mean by that?

2 A Well, I think -- I don't mean to say all and I
3 don't mean to say always, but agencies take their time
4 paying their bills.

5 Q Now, focusing on --

6 A Which means 90, 120 and even 150 days if that's --

7 Q It's not uncommon?

8 A No.

9 Q Focusing now if you would for purposes of this
10 question on clients or vendors other than Hicks Broadcasting
11 of Indiana, do you charge interest --

12 A No.

13 Q -- on those receivables?

14 A No.

15 Q Do you have any knowledge whether or not it is the
16 custom and practice of the industry to charge interest on
17 those receivables?

18 A I don't know anyone who does.

19 Q And as we've heard in this case, you also never
20 charged interest on the Hicks receivable, is that also true?

21 A That's also true.

22 Q Now, even though you got the Pathfinder balance
23 sheet with aggregated receivables, didn't you also get WRBR
24 financials?

25 A I was on their distribution list, yes.

1 Q And the -- what would be reflected as a payable to
2 Pathfinder is in fact separated culled out on those
3 financials, isn't it?

4 A That's right.

5 Q Did there come a time, Mr. Dille, when you became
6 aware that the payable from Hicks Broadcasting on behalf of
7 WRBR was becoming significant?

8 A Yes.

9 Q Could you tell us about that?

10 A In December, near -- near the end of the year, Bob
11 Watson and I were talking about something. And he said in
12 the course of the discussion, "You know, this" --
13 paraphrasing -- "this Hicks receivable is" -- "is coming to
14 be a significant number." And by that, he meant the 50 plus
15 thousand dollars from the November month. And remember,
16 when I'm talking about these numbers, there are lags. So
17 we're in the middle of December talking about November.

18 So I notice and say to Bob, "Well, let's just" --
19 "let's see what December brings" because if you know
20 accountants, at least -- if the fiscal year is on the same
21 schedule as a calendar year, at the end of the year, that --
22 in the last month, that's when they do their fixing things
23 from reclassifications and I dare -- I don't want to say
24 mistakes, but that's when they make their books right for
25 the year.

1 So I said, "Let's see what December brings",
2 thinking that that number would go down.

3 Q Just for the record, Mr. Dille, what year are we
4 referring to here?

5 A 1994 -- the end of '94. So, okay, now we're in
6 the middle of January and looking at December. And I get
7 the number and it's more. It's higher, sixty-something --
8 sixty-four I think is the number. And I don't -- I don't
9 know what to do because that's a big enough number that it
10 would be a concern.

11 Q A concern to who?

12 A To me.

13 Q Why?

14 A Well, I would like to have the money.

15 Q So what did you consider doing at that time?

16 A Well, I didn't quite know what to do. I mean, I
17 could call Dave Hicks up and say, "You know, this is kind of
18 getting up there." But I thought his response might be,
19 "Hey, you know, Dille, you're in charge of the sales thing.
20 If you got that going, I wouldn't have this." So I didn't
21 really care to start that discussion. So I didn't do
22 anything.

23 And I waited another month. Now I'm in the middle
24 of February. And two things happened. One, I look back at
25 January and it's even higher which is not good. But at the

1 same time, in the middle of February, I -- because we get
2 sales reports, time is sold in advance as you can imagine.

3 You can see bookings for -- I'm now in the middle
4 of February -- see bookings for March and bookings for April
5 and some bookings for May and June and so forth, going down
6 as you might imagine the further out we go. I could see
7 March was coming along and I could see April was coming
8 along.

9 And so I -- I was pretty confident that the
10 problem was about to go away. And in fact, they were out of
11 the woods 30 days later. By March they were in the clear.

12 Q What do you mean by "in the clear" or "out of the
13 woods"?

14 A Well, they had -- they had crossed over and paid -
15 - well, it wasn't really reconciled until -- I don't think
16 until the end of the month. But April was a positive
17 number, twenty-something-or-other thousand bucks. So they -
18 - in looking back, they were in the clear in the middle of
19 March --

20 Q Now, still --

21 A -- generally speaking.

22 Q -- still focusing on this period of time then and
23 those receivables, Mr. Dille, did you ever think of that
24 receivable as a form of financing the acquisition of WRBR by
25 Hicks Broadcasting?

1 A No.

2 Q Did -- did you ever consider it in any way to be
3 consistent with the representation that you had made the
4 Commission that you wouldn't finance the acquisition?

5 A No.

6 Q Why not?

7 A Well, those receivables were booked. I think the
8 JSA contemplated some ebbing and flowing. And we had no
9 claim on those -- on those assets of Hicks or anything of
10 that kind.

11 Q Did you have any security interests or anything
12 like that?

13 A No. No, we had no -- we had a clear-cut
14 accounting of what money was collected, what expenses and so
15 forth. And that was clear down to the dollar.

16 Q Did the Hicks receivable in terms of the
17 accounting and the financials of Pathfinder get treated
18 differently in any way than other receivables from other
19 clients?

20 A No. No.

21 Q And, Mr. Dille, I would like to ask you to turn,
22 if you would, in your binder to Mass Media Bureau Exhibit
23 Number 30 which I believe is in Volume 2.

24 A Volume 1, Volume 3. These are -- 2.

25 MR. JOHNSON: And while you're doing that, Mr.

1 Dille, for the record, Your Honor, this is a letter
2 apparently written on March 17th, 1994 from John Dille to
3 Steve Klein (phonetic).

4 JUDGE CHACHKIN: And what number is this we're
5 looking at?

6 MR. JOHNSON: Mass Media Bureau Exhibit Number 30.

7 JUDGE CHACHKIN: Thirty. Pathfinder.

8 MR. JOHNSON: I'm sorry. Is it Pathfinder 30?

9 THE WITNESS: Got it.

10 MR. JOHNSON: Let's just give everybody a second
11 to shift binders now.

12 BY MR. JOHNSON:

13 Q First let me ask you whether you've seen this
14 document before?

15 A I have.

16 Q And is that your signature on the bottom of the
17 document?

18 A It is.

19 Q Did you prepare this letter on or about March
20 17th, 1994?

21 A I did.

22 Q And did you cause it to be delivered to Mr. Klein?

23 A Yes, sir.

24 MR. JOHNSON: Okay. Your Honor, at this time we
25 would offer Pathfinder Exhibit Number 30.

1 JUDGE CHACHKIN: Any objection?

2 MR. SHOOK: No objection.

3 JUDGE CHACHKIN: The exhibit is received.

4 (The document previously
5 marked for identification as
6 Pathfinder Exhibit Number 30
7 was received in evidence.)

8 BY MR. JOHNSON:

9 Q Mr. Dille, why did you write this letter?

10 A I -- at the suggestion of Alan Campbell, I wanted
11 to make it crystal clear to Steve that in anticipation of
12 the Hicks takeover of WRBR, that I wanted nothing to do with
13 the daily operations of WRBR.

14 Q Okay. And Mr. Campbell suggested that you write
15 this letter?

16 A He did.

17 Q Now, we've talked for the last ten or 15 minutes
18 or so about finances. And I don't want to revisit that.
19 But let me just ask you this question. Focusing on the
20 period of time from March 17th, 1994 up to and including
21 today, have you in any way been involved, Mr. Dille, in
22 personnel decisions at WRBR?

23 A No.

24 Q Focusing on that same period of time, March 17th,
25 1994 up to and including today, have you in any way been

1 involved in programming decisions at WRBR?

2 A No.

3 MR. JOHNSON: Thank you, Mr. Dille. Your Honor,
4 we don't have any further questions at this time.

5 JUDGE CHACHKIN: There have been a lot of exhibits
6 which have been identified but not offered. You don't
7 intend to offer them or what?

8 MR. JOHNSON: I think not, Judge. At the next
9 break, we'll review and before we rest, make sure that there
10 isn't some loose end out there. But our review this morning
11 indicates that there might only be one or two exhibits that
12 have been identified and not yet in evidence that we may
13 move in at the close of this.

14 JUDGE CHACHKIN: All right. Cross examination.

15 CROSS EXAMINATION

16 BY MR. BOYCE:

17 Q Good afternoon, Mr. Dille. My name is Roy
18 Boyce --

19 A Good afternoon, Mr. Boyce.

20 Q -- from the Mass Media Bureau. Could you turn to
21 Mass Media Bureau Exhibit 1, page 31 which is your note to
22 Mr. Booth of 8/17/93.

23 A That's Volume 1, what?

24 Q Page 31 -- handwritten page 31.

25 A Yes.

1 Q Now, if you would look at the third paragraph
2 which begins, "The above along with the de minimis nature",
3 if you would read that to yourself.

4 JUDGE CHACHKIN: Could you keep your voice up,
5 Counsel.

6 THE WITNESS: Yes.

7 BY MR. BOYCE:

8 Q Now, if I recall your -- your testimony correctly,
9 didn't you entertain that you had already been advised by
10 counsel that no waiver would be necessary to accomplish the
11 interest of your children?

12 A That is correct.

13 Q And then how is it that in this letter or this
14 memo of August 17th, you appear to assume that some type of
15 waiver might be necessary?

16 A This -- this is the -- this -- Booth and I had
17 discussed this very point with regard to our own -- when we
18 were negotiating our own deal. And this is the nature of
19 it, I think. At the time, we were -- Bakersfield was we
20 thought an analogous situation. And so I am telling John
21 Booth here that I had described the -- that situation to
22 Dave.

23 Q So your -- this had nothing to do with the -- the
24 new proposal that you were now advancing to Mr. Booth, that
25 Mr. Hicks would own the station and -- with your children as

1 minority shareholders holding an option. Is that your
2 testimony?

3 A That's -- well, that's correct.

4 Q Well, why was it necessary to revisit issues from
5 your own negotiations with Mr. Booth?

6 A I -- here, let me try this. I -- I think I may
7 have had in my own mind -- this may not be the most accurate
8 document I ever wrote in my life -- but that if in the event
9 Hicks did pursue this deal and if in the event he included
10 my kids and if in the event they were interested and if in
11 the event they did -- were able to have the opportunity,
12 then -- and if the rules were the same and if this is
13 correct, that Bakersfield is the right premise, then that's
14 how it would work. I think that's what I meant.

15 Q But did you anticipate the possibility that your
16 kids' interests might require some sort of waiver?

17 A I -- I wasn't sure. I was interested in -- in
18 having a chance for them. But that's -- that's as far as I
19 got.

20 Q Now, Mr. Booth had already rejected the idea of a
21 waiver, is that correct, in connection with your own
22 proposal?

23 A I don't think he rejected the idea of a waiver.

24 Q Well, he didn't want to wait for a waiver.

25 A Right. That's correct.

1 Q Now, when you sent this note to him, did you hear
2 anything back from him?

3 A I don't -- I don't recall.

4 Q Do you recall whether he --

5 A I don't recall whether I heard anything from him
6 or Ritter with whom I had also --

7 Q Well, do you recall hearing that he had gotten in
8 touch with his counsel?

9 A I -- I don't know. Not --

10 Q Well --

11 A -- not at -- no. I mean, his counsel had -- had
12 said before in June or sometime that -- that he didn't want
13 to -- that the waiver was going to take some time and he
14 didn't want to wait that long if that's what you're talking
15 about.

16 Q Well, do you have any reason to believe that when
17 he received your note and saw a discussion about a waiver,
18 that he became upset in some way about the possibility that
19 it was still -- you were still proposing something which
20 might require a waiver?

21 A No. No, this -- no. No, I wasn't -- I wasn't
22 proposing. I was -- I mean, I think I said, the idea of --
23 I mean, the thing involving the kids was my hope.

24 Q Well, at this point when you sent this memo to Mr.
25 Booth, had you been in touch already with Alan Campbell to